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P-TAX 203B INFO

State of Illinois Public Act 93-657 (effective June 1, 2004) amends the Real Estate Transfer Tax Law set forth in Article 31 of the Property Tax Code, and imposes a new state revenue tax. **TRANSFERS RELATING TO, BUT NOT LIMITED TO**, the following types of interests may be subject to the new tax:

GROUND LEASES DEVELOPMENT RIGHTS
ASSIGNMENTS of BENEFICIAL INTEREST EASEMENTS
MINING RIGHTS ROYALTY INTERESTS
AIR RIGHTS TIMBER RIGHTS
COOPERATIVE HOUSING RIGHTS TIMESHARE RIGHTS
CONDOMINIUM RIGHTS Transfers of CONTROLLING INTEREST in Real state

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State of Illinois Public Act 93-1099 (effective June 1, 2005) makes additional changes to the Real Estate Transfer Tax Laws. Key changes under P.A. 93-1099 (per memo received from IL Dept of Revenue 5/31/05) are as follows:

The "trust document" definition has been expanded to include **any** document related to the transfer of a taxable beneficial interest.

The Illinois Department of Revenue is allowed to prescribe a document to affix stamps for non-recorded transfers when real estate tax must be paid.

There is no longer a split between the state and county tax bases. County boards may now impose a tax at the same rate on the transfer of a beneficial interest (Section 31-35 of the Property Tax Code).

If imposed, please note that:

Any transactions that are exempt under Sections 31-45 or 31-46 are also exempt from the county tax. County tax is owed if the transfer is made by one or more related transactions or involves one or more persons or entities, regardless if a document is recorded.

On May 18, 2006, the Will County Board adopted an ordinance allowing the collection of the County portion of this tax.

NEW REVENUE FORMS: To assist the Will County Recorder in complying with the implementation of these acts, documents transferring such interests will require the completion of both the P-TAX 203 (not yet revised) form, as well as the NEW P-TAX 203B (implemented June 2004 & revised June 2005) and the newly created (June 2005) PTAX-203-NR (for collection of the tax on non-recorded transfers). Revenue will be collected for both the State of Illinois and County portions of the tax at time of recording.

EXEMPTIONS: We cannot provide legal advice regarding whether the above types of documents qualify for exemption. If you wish to record such documents and declare that no tax is due or payable, **you will be required to submit documentation which would substantiate this claim.** Please contact our office regarding affixing a certification statement under provisions of Public Act 93-657.

MUNICIPAL STAMPS: Municipalities which require that municipal revenue stamps be affixed to Deed transfers MAY ALSO REQUIRE REVENUE BE AFFIXED to the above types of transfers. Please consult with the municipality in which the property is located for information on their requirements in this matter.

If you have questions regarding this tax or completion of the necessary forms, you will need to contact the ILLINOIS DEPARTMENT OF REVENUE or visit our website at:

<http://www.revenue.state.il.us/>

(rev. 6/3/05 RE: exemptions; rev. 5/20/06 RE: county collection of tax)

Implementation of Public Act 93-657

Ground leases

The lessee interest in a ground lease (including any interest of the lessee in a related improvement) is subject to tax if it provides for a term of 30 or more years. Any expired portion of the lease term and all options to renew or extend are included in determining whether this term requirement has been satisfied. This means that the tax would be due if there is an assignment or sublease in the tenth year of a lease running for a 30-year term.

Consideration for a ground lease is the present value of any payments attributable to the use and occupancy of the real property, including the right to receive rental payments under the initial term and any renewal or extension of the lease. The taxpayer must also account for any consideration attributable to related improvements that may have been transferred in the transaction.

It is the department's position that the initial lease of real estate (such as a 99-year lake lease by a unit of local government) and the subsequent assignment of any remaining portion of the term of the lease or the transfer of any related improvement will constitute taxable events under Public Act 93-657.

Controlling interest transfers

A transfer of the indirect interest in real property as reflected by a controlling interest in a real estate entity is subject to tax.

A "real estate entity" means any person including, but not limited to, any partnership, corporation, limited liability company, trust, other entity, or multi-tiered entity, that exists or acts substantially for the purpose of holding directly or indirectly title to or beneficial interest in real property. There is a rebuttable presumption that an entity is a real estate entity if it owns, directly or indirectly, real property having a fair market value greater than 75 percent of the total fair market value of all of the entity's assets, determined without deduction for any mortgage, lien, or encumbrance.

A controlling interest is transferred if it includes more than 50 percent of the fair market value of all the ownership interests or beneficial interests in the real estate entity. Such a transfer could occur as a result of a single transfer or a series of related transfers, which are aggregated for the purpose of making this determination.

Related transfers include:

- Multiple transfers of interests in the same real estate entity that occur within a rolling 24-month period by the same transferor.
- Multiple transfers of interests in the same real estate entity that occur within a rolling 24-month period by different transferors who act in concert as a result of common ownership.
- Multiple transfers of interests in the same real estate entity that occur within a rolling 24-month period by different transferors who act in concert as a result of a common purpose in structuring and executing the transfers, including instances when sales agreements contain mutual terms or other agreements bind the transferors to a particular course of action.

For detailed examples, see 86 Ill. Adm. Code §120.20.

Implementation of Public Act 93-657

Other taxable beneficial interests

Public Act 93-657 does not provide an exclusive listing of all possible types of taxable beneficial interest transfers. Taxpayers should voluntarily report and pay the state transfer tax on transfers relating to other types of interests with the right to use or occupy real property or the right to receive income from real property such as air rights, air space rights, cooperative housing rights, condominium rights, development rights, easements, mining rights, royalty interests, timber rights, and timeshare rights.

Form PTAX-203

To avoid confusion, Form PTAX-203, Illinois Real Estate Transfer Declaration, will not be revised at this time. The need to revise this form will be evaluated after the outcome of the pending trailer legislation is known. Interim instructions for completing Form PTAX-203 for ground leases and controlling interests transfers are set forth below.

- Page 1, Step 1, Line 5: Affected taxpayers must write "ground lease" or "controlling interest in real estate entity" in the field marked "Other".
- Page 1, Step 2: Affected taxpayers should not complete this calculation. The state tax is calculated in Step 4 on Form PTAX 203-B.
- Page 2, Step 4: Affected taxpayers should substitute appropriate terms for "seller" and "buyer" in the signature lines and add Form PTAX-203-B to the list of required submissions in the blank area to the right of the preparer's email address.

Form PTAX-203-B

Taxpayers must submit new form, Form PTAX-203-B, Illinois Real Estate Transfer Declaration Supplemental Form B (copies enclosed), with the transfer declaration for ground leases or the transfer of a controlling interest in a real estate entity beginning June 1, 2004. A brief summary of the form follows:

Page 1, Instruction box: Indicates interim instructions for Form PTAX-203. (The department has developed an informational bulletin (copy enclosed) that you may reproduce for use in your county.)

Page 1, Recorder's box: Adds a field for recorders to mark if the taxpayer cannot provide proof of prior payment in order to monitor the submission of duplicate transfer declarations that are recorded after payment of the transfer tax. (If proof of prior payment is not provided, then the taxpayer must again pay the tax in order to record a document.)

Page 1, Step 1, Line 1: Requires property identification information for the ground lease or controlling interest in a real estate entity. (The information on Lines 1 and 2 of the PTAX-203-B will correspond with that listed on Lines 1 and 3a on the PTAX-203.)

Page 1, Step 2: Documents ground lease information.

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Part 1, Step 3: Documents real estate entity information.

Page 1, Step 4: Explains the calculation of the state transfer tax. The instructions restate amounts that must be included in determining the full actual consideration for a transfer. The tax is based on the total value of the aggregate interest reported on Line 9a for controlling interest transfers. Deductions are permitted for (1) the amount of personal property transferred to the transferee, (2) the amount of other real estate transferred to the transferor in an actual (simultaneous) exchange between the same parties, (3) the amount of any mortgage remaining outstanding at the time of transfer as substantiated in the transferring document or other supplemental information submitted by the parties, (4) the amount of corporate franchise tax actually paid under the Business Corporation Act of 1983 as a result of a transfer of a controlling interest in a real estate entity, and (5) the amount of state transfer taxes previously paid if there is a subsequent transfer of an additional interest involving the aggregation of related transfers. (This language corresponds with the substantive rulemaking changes which clarify common reporting issues. Taxpayers should be encouraged to use the back of the form to explain any special circumstances.)